

**BAKER
&
HOSTETLER**
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500
FAX (202) 861-1783 • TELEX 235727861-1725
WRITER'S DIRECT DIAL NUMBER (202)

August 1, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED
AUG 1 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Re: RM-8658

Dear Mr. Caton:

On behalf of HEAR-IT NOW, we submit the enclosed original and four copies of Reply Comments with respect to RM-8658. Please contact the undersigned if you have any questions.

Yours very truly,


Frederick H. Graefe

Enclosures

No. of Copies rec'd 024
List A B C D E WT

RECEIVED

AUG 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Section 68.4(a) of the Commission's Rules
Hearing Aid-Compatible Telephones

)
)
)
)

RM-8658

REPLY COMMENTS

DOCKET FILE COPY ORIGINAL

Frederick H. Graefe
Michael C. Ruger
Deena M. Umbarger

Counsel to HEAR-IT NOW

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

August 1, 1995

SUMMARY

The issue of Personal Communications Services compatibility with hearing aids is a legitimate concern to the Nation's four million individuals who wear hearing aids. These individuals must be ensured of access to all PCS devices in order to be full participants in the telecommunications revolution.

Various members of the wireless telecommunications industry have chosen to ignore a series of scientific studies that demonstrate that certain digital transmission systems that may be used for PCS devices can and do cause interference to hearing aids. The known and proven problem of interference to hearing aids will not be eliminated by operation of PCS devices in the 1900 MHz band, or at power levels lower than those employed in Europe.

Nor can the problem of hearing aid interference be solved by placing the burden of access on those who wear hearing aids. While some members of the wireless telecommunications industry may prefer that individuals who wear hearing aids purchase new, "shielded" aids in order to access PCS telephones, this "solution" overlooks the facts that shielded hearing aids are not available, that existing hearing aids cannot be retrofitted with shielding devices, and that minimum shielding standards recently adopted in Europe are insufficient to allow use of a hearing aid with GSM PCS telephones. Other "solutions," such as suggesting that an individual who wears a hearing aid can simply use the other ear if interference is received, are simply unrealistic.

The Hearing Aid Compatibility Act of 1988 mandates that the Commission periodically examine exemptions to that law. The Commission has not conducted such an examination for PCS devices, and should do so now. The fact that industry groups are investigating the problem of hearing aid compatibility does not exempt the Commission from fulfilling its mandate under the law. Indeed, delay in resolving access concerns will disserve the public interest by greatly restricting future access options, and could ultimately cause serious disruption to the wireless telecommunications industry.

In order to ensure that PCS service is initiated at the earliest possible date while at the same time ensuring that the four million Americans who wear hearing aids have access to PCS, the Commission should establish a negotiated rulemaking proceeding to expedite resolution of PCS access issues. A negotiated rulemaking proceeding would complement the work of industry groups while ensuring that the public interest is truly represented in searching for solutions to the problem PCS compatibility with hearing aids.

TABLE OF CONTENTS

	<u>Page Number</u>
Summary	i
Introduction	1
I. Individuals who wear hearing aids must have access to <u>all</u> PCS devices.	2
II. The "solutions" proposed by commenters in this proceeding unfairly place the burden of access on those who wear hearing aids.	6
III. Delay in resolving access concerns will greatly restrict future access options.	11
IV. The Hearing Aid Compatibility Act mandates the FCC to examine the issue of compatibility for PCS devices.	12
A. Congress has mandated that the Commission reexamine the compatibility exemption irrespective of industry's efforts in this area.	12
B. HEAR-IT NOW has met the four statutory factors mandating revocation of the exemption for PCS devices.	15
V. The FCC should establish a negotiated rule-making proceeding in order to expedite resolution of access issues relating to PCS.	16
VI. Conclusion	18
Attachment: Focus Group Studies	

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	RM-8658
Section 68.4(a) of the Commission's Rules)	
Hearing Aid-Compatible Telephones)	

REPLY COMMENTS

1. Helping Equalize Access Rights in Telecommunications Now, or HEAR-IT NOW,¹ through counsel, files these Reply Comments in response to the comments filed regarding HEAR-IT NOW's Petition for Rule Making. This proceeding raises a basic question of access to new communications technologies--that is, will the Nation's four million hard of hearing individuals who wear hearing aids have access to all of the benefits of new broadband PCS devices? Commenters in this proceeding acknowledge that certain digital transmission systems that may be used for PCS devices can and do cause interference to hearing aids--interference that, in turn, will preclude access. While commenters overwhelmingly profess to support the principle of compatibility between PCS devices and hearing aids, they oppose initiation of a rulemaking proceeding regarding this issue. The Commission, however, is required to act in the public interest, convenience and necessity; here, the Hearing Aid Compatibility Act of 1988 compels the Commission to

¹ HEAR-IT NOW is a coalition of groups formed to promote equal access by the Nation's four million hearing aid wearers to advanced communications services. Members of HEAR-IT NOW include Self-Help for Hard of Hearing People, Inc., the Alexander Graham Bell Association for the Deaf and the Wireless Communications Council.

take steps to ensure that all Americans will have access to new PCS devices.

I. INDIVIDUALS WHO WEAR HEARING AIDS MUST HAVE ACCESS TO ALL PCS DEVICES.

2. The four million Americans who wear hearing aids must have access to all PCS devices. Contrary to the claims of some commenters,² HEAR-IT NOW has never suggested that the Commission should look at only one digital technology in establishing compatibility standards; indeed, the development of effective solutions to access issues requires an investigation of all digital PCS technologies.

3. Significant attention has focused on the issue of interference created by telephones employing the Global System for Mobile Communications (GSM) operating system. This attention is warranted, as studies conducted in a number of countries confirm that GSM causes interference to most existing hearing aids when the hearing aid wearer attempts to use a GSM phone, and may cause interference to nearby individuals who wear hearing aids as well. For instance, a recent study conducted by the National Acoustic Laboratories in Australia determined that none of the unmodified, currently available hearing aids tested "were suitable for communicating using a [2 watt GSM] handheld mobile telephone" and "[v]ery few existing hearing aids are likely to be suitable for use

²See GSM MoU Comments at 2; Nortel Comments at 5; PCIA Comments at 2; Nokia Mobile Phones Comments at 2; Ericsson Comments at 5; Siemens Stromberg-Carlson Comments at 1; American Personal Communications Comments at 3.

with a mobile telephone."³ Indeed, several commenters acknowledge the fact that GSM causes interference to hearing aids.⁴

4. In its comments, CTIA attempts to obscure the reality of GSM interference by asserting that "all digital technologies have the potential to interact with other electronic devices."⁵ This assertion, however, overlooks the fact that, when used at normal operating conditions, all digital technologies do not create interference to hearing aids. According to a study appended to the comments of Qualcomm, Inc., Code Division Multiple Access (CDMA) technology, when used at normal operating conditions, can be used in conjunction with a hearing aid.⁶

5. GSM MoU attempts to attack the credibility of the European studies by claiming that researchers tested old, inferior quality hearing aids.⁷ Unless all existing and currently available hearing aids are classified as "old" and of "inferior quality," there is no support for this assertion. Dr. Ole Mork Lauridsen of Telecom Danmark, in describing tests conducted by his laboratory, noted that "[a] large number of hearing aids of different types and from different manufacturers belonging to [the European Hearing

³See Interference to Hearing Aids by the Digital Mobile Telephone System, Global System for Mobile Communications (GSM), National Acoustic Laboratories, May 1995 at 48-49 ("1995 Australian Study").

⁴See GSM MoU Comments at 2-3; BellSouth Comments at 6-7.

⁵CTIA Comments at 4.

⁶Qualcomm Comments at 4, Attachment A at 6-7.

⁷GSM MoU Comments at 5.

Instruments Manufacturers Association] was exposed to simulated GSM" signals;⁸ presumably, this "large number" of aids tested by Dr. Lauridsen included both new and old hearing aids. Indeed, the 1995 Australian Study tested a cross-section of hearing aids that are "representative of current hearing aids in general use"⁹ and found that interference resulted from use of GSM phones. Therefore, the results of these studies cannot be dismissed on flimsy, unsupported assertions that only old, inferior aids were tested.

6. Several commenters have attempted to further cloud the issue at hand by claiming that previous scientific studies of GSM interference are inapplicable to the operation of PCS in the United States, as GSM will operate at a different frequency and a higher power in the United States. Operation at a different frequency, however, will not eliminate the problem of interference to hearing aids; indeed, a study appended to the comments of the GSM MoU states that "[t]he hearing aids tested proved more susceptible to [GSM interference at] 1900 MHz than 900 MHz (mean immunity 7 dB worse.)"¹⁰

7. As HEAR-IT NOW noted in its Petition, the power level at which a GSM phone operates will affect the extent of interference.¹¹ Commenters generally concede that GSM PCS devices

⁸HEAR-IT NOW Petition for Rule Making at Appendix 2, p.8.

⁹1995 Australian Study at 15.

¹⁰GSM MoU Comments at Appendix 3, p. 50.

¹¹HEAR-IT NOW Petition at n.9.

in the United States will operate at a maximum power level of one watt, rather than the European standard of two watts.¹² While operation at a lower power will affect the likelihood that an individual wearing a hearing aid will detect interference from a nearby GSM user, lower-powered operation will not ensure effective access to GSM PCS phones.

8. HEAR-IT NOW recently convened a focus group of fifteen individuals who wear hearing aids and asked them to test portable telephones which simulated GSM and CDMA transmissions. The GSM telephone operated at a maximum power of 0.2 watts in the 1900 MHz band. Twenty-five of the twenty-six hearing aids worn by members of the focus group were affected by GSM interference when individuals attempted to place the GSM telephones to their ears.¹³ Participants described the GSM interference as "extremely loud,"

¹²Certain commenters attempt to obscure this issue by comparing average and maximum operating power. The average operating power of a GSM device is one-eighth of its maximum operating power. The average operating power of a two-watt European GSM mobile telephone is 0.25 watts; the average operating power of a one-watt GSM PCS device would be 0.125 watts. As Qualcomm notes in its comments, "[t]he most significant factor in determining the degree of interference to hearing aids and other susceptible electronic equipment is the peak transmitter power, not average power, of the portable telephone." Qualcomm Comments at 3-4. To imply that American GSM PCS devices will not interfere because the devices will operate at 0.125 watts rather than two watts, see Ericsson Comments at 4-5 and American Personal Communications Comments at 6, is misleading.

¹³See "Report on the Effects of Digital Cellphones on Hearing Aids" by Dr. Linda Salchenberger and "A Test for Interference with Hearing Aids by Digital-Technology Cellular Telephones" by David A. Shirley at Attachment. The twenty-sixth hearing aid was worn by an individual who described his hearing loss as profound. Shirley at 2.

"painful," "very annoying" and "really uncomfortable."¹⁴ This informal experiment suggests that, even at reduced operating power, GSM can interfere with hearing aids.

9. A number of commenters further attempt to minimize the effects of GSM interference to hearing aids by analogizing that interference to interference received from fluorescent lights, hair dryers and electronic store security systems.¹⁵ These comparisons are patently absurd and irrelevant. The issue at hand is not one of general interference to hearing aids--rather, it is whether individuals who wear hearing aids will be denied access to one of the most exciting and useful advances in personal communications ever introduced in the United States. A hair dryer, after all, is not a communications device.

II. THE "SOLUTIONS" PROPOSED BY COMMENTERS IN THIS PROCEEDING UNFAIRLY PLACE THE BURDEN OF ACCESS ON THOSE WHO WEAR HEARING AIDS.

10. The commenters to this proceeding promote several solutions to the problem of GSM interference to hearing aids. Unfortunately for the Nation's four million individuals who wear hearing aids, the piecemeal "solutions" proposed by the wireless industry would require these individuals to navigate a maze of options at their own expense in an attempt to gain access to PCS networks, with no assurance that their efforts will ultimately prove successful.

¹⁴Shirley at 2.

¹⁵See GSM MoU Comments at 4; Southwestern Bell Mobile Systems Comments at 6; Ericsson Comments at 6; American Personal Communications Comments at 8; CTIA Comments at 4, n.8.

11. Individuals who wear hearing aids should not be forced to bear the costs of access to newly introduced telecommunications equipment, particularly when it is apparent from the outset that the equipment will create interference to hearing aids. Yet this is precisely what many of the commenters propose in suggesting that individuals who wear hearing aids purchase new, shielded devices.¹⁶ A hearing aid is not an inexpensive device; the average cost of a hearing aid is \$600, and can escalate to over \$2,000.¹⁷ This cost is doubled for many individuals, as hearing impairments generally affect both ears. As the cost of hearing aids is not covered by most insurance plans, the individual must bear this expense. While GSM MoU argues that a hearing aid has a lifespan of only five years, and therefore purchasing a new hearing aid is not an undue burden,¹⁸ this argument overlooks the fact that many individuals retain their hearing aids for more than five years.

12. Despite the claims of the various commenters to this proceeding, it is questionable whether shielding is a realistic option. The Hearing Industries Association does not believe that hearing aids can be shielded:

In contrast to Europe, where larger behind-the-ear hearing aids dominate, the vast majority sold in the United States are models that fit completely within the user's ears. Because of the size limits inherent in this

¹⁶It is not practical to retrofit existing hearing aids with shielding devices. See 1995 Australian Study at 48.

¹⁷Replacement costs for four million hearing aids, therefore, could range from \$2.4 to \$8 billion--an amount in excess of the cost of installing a nationwide PCS network.

¹⁸GSM MoU Comments at 9.

product, there is little room available to shield the instrument or provide countermeasures for electronic interference. It is highly unlikely, in the near future, that hearing aid technology will be able to protect wearers from electronic interference caused by a number of [PCS transmission] systems currently under consideration.¹⁹

The 1995 Australian Study echoes this concern, noting that not all hearing aids can be shielded so as to permit the use of a GSM phone.²⁰ The shielding "solution," therefore, would not only subject individuals who wear hearing aids to additional expense, but would also restrict the types and models of hearing aids from which they may choose. It is astonishing to think that responsible members of the wireless telecommunications industry would want to place an individual in the position of choosing between a hearing aid that is best suited to assist her hearing and a model that can be used with a PCS phone, yet this is a plausible scenario under the shielding "solution."

13. The question as to whether hearing aids can be adequately shielded is complicated by the question of what level of shielding is necessary to ensure immunity. It does not appear that European immunity standards, which take effect as of January 1, 1996, will lead to properly shielded hearing aids. While European regulations will require immunity levels of 3 V/m, the European Technical Standards Institute is considering immunity levels of 10 V/m. Dr. Lauridsen of Telecom Danmark has stated that the immunity level should be at least 50 V/m to ensure that an individual can use a

¹⁹Comments of Hearing Industries Association at 3.

²⁰1995 Australian Study at 29.

GSM phone in conjunction with a hearing aid.²¹ Furthermore, the 1995 Australian Study concludes that in order to ensure access the lower bound of the immunity levels should be 58 V/m.²² Clearly, as there is no agreement as to what constitutes an appropriate immunity level, it cannot be assumed that adequately shielded hearing aids will appear on the market at any time in the near future.

14. The other "solutions" offered by CTIA are equally insensitive. CTIA suggests that individuals can use a GSM phone in the non-hearing aid-assisted ear.²³ This "solution" overlooks a basic fact of hearing loss--namely, that it is unusual for an individual to have a loss of hearing in only one ear. The most common form of hearing loss is sensorineural hearing loss, which affects both ears. The fact that an individual wears only one hearing aid does not indicate that the individual has adequate hearing in the other ear.

15. CTIA also suggests that individuals who wear hearing aids can instead use analog telephones. Aside from the obvious inequity resulting from denying individuals who wear hearing aids the choice of taking advantage of the benefits of PCS technology, CTIA overlooks the fact that an individual may have no choice but to use a digital PCS device--for instance, as a requirement for a job.

²¹HEAR-IT NOW Petition for Rule Making at Exhibit 2, p. 11.

²²1995 Australian Study at 33. That study suggests that an immunity level of 25 to 50 V/m would result in some interference that would not preclude access. Id.

²³CTIA Comments at 16.

Older, less efficient analog telephones will not serve as an adequate substitute in the workplace for new, digital PCS technology. To accept this solution is tantamount to accepting the creation of a telecommunications underclass. It is clearly not in the public interest to suggest that a portion of the Nation's population should be precluded from the benefits of digital wireless communications. Separate but equal access, as we know, necessarily means unequal access.

16. An alternative solution proposed by several commenters is an earpiece-type device that permits an individual to use a portable telephone in conjunction with a hearing aid.²⁴ In order to use this device, the telephone must have an external port to accommodate the earpiece; not all telephones offer such a port. The user must then purchase the device itself, which can cost over \$100.²⁵ According to a brochure submitted in conjunction with BellSouth's comments, the device is specifically tailored to particular makes of telephones; therefore, if an individual wishes to use a PCS device from a different manufacturer, he or she would have to purchase a new device. As a result, the ability of an individual who wears a hearing aid to use another person's PCS telephone would be limited. Ultimately, even this solution precludes equal access to wireless telecommunications devices.

²⁴See BellSouth Comments at 12; CTIA Comments at 15.

²⁵BellSouth Comments at Attachment, HATIS Pricing.

III. DELAY IN RESOLVING ACCESS CONCERNS WILL GREATLY RESTRICT FUTURE ACCESS OPTIONS.

17. One commenter asserts that there is no need to initiate a proceeding to require PCS compatibility with hearing aids at this time, as PCS devices are not yet in operation.²⁶ Yet if the FCC waits until after networks are in operation to address issues relating to PCS compatibility with hearing aids, the opportunity to explore and to adopt effective compatibility requirements will be lost. As the European experience with GSM illustrates, once a network is in place the burden of finding and financing solutions will fall primarily on individuals who wear hearing aids; otherwise, hearing aid compatibility requirements would likely require retrofitting of existing PCS equipment. The time and expense relating to retrofitting existing equipment would necessarily preclude effective, swift compatibility. The Commission, the wireless communications industry and individuals who wear hearing aids would face a situation similar to that resulting from the original implementation of the Hearing Aid Compatibility Act of 1988. It is astounding that the wireless communications community would prefer to face the unknown risks of future regulation rather than address a known problem at the earliest possible stage in a legitimate attempt to resolve the issue.

18. Despite the fact that problems with GSM transmission systems have been reported for several years, CTIA and PCIA have

²⁶Southwestern Bell Mobile Systems Comments at 2.

just initiated investigations of PCS-hearing aid compatibility issues.²⁷ Such efforts are a step in the right direction, but the wireless industry, individuals who wear hearing aids and the FCC cannot merely wait until these studies are concluded. Furthermore, while CTIA predicts that its studies will be completed in six months, it is also clear that the examination will not result in solutions, but only an identification of the extent of the problem of interference to hearing aids from CTIA's point of view.

IV. THE HEARING AID COMPATIBILITY ACT MANDATES THE FCC TO EXAMINE THE ISSUE OF COMPATIBILITY FOR PCS DEVICES.

- A. Congress has mandated that the Commission reexamine the compatibility exemption irrespective of industry's efforts in this area.

19. Commenters in this proceeding almost universally exhort the Commission to deny the petition for rulemaking and to refuse to revisit the exemption initially put in place seven years ago, largely on the grounds that the industry is behaving responsibly and cooperatively to solve the problem. These commenters ignore the fact that Congress has mandated that the Commission periodically review the exemptions,²⁸ irrespective of what efforts industry makes toward compatibility. Review or revocation of the exemption was not made contingent upon industry behavior, and the Commission was not simply to serve as a monitor of the voluntary efforts of industry. Rather, the Commission has an affirmative

²⁷CTIA's investigation began on June 6, 1995--the day after HEAR-IT NOW filed its rulemaking petition with the FCC.

²⁸47 U.S.C. § 610 (b) (2) (C).

duty to review the exemption periodically and to revoke it if the four requirements for revocation are met.²⁹

20. The initial exemption for public and private mobile radio services was based on two factors, neither of which remain compelling in the PCS arena. The first reason was the cost and technological infeasibility of making those types of telephones compatible.³⁰ At that time, it was considered impossible to make wireless telephones compatible with hearing aids. Generally, commenters avoid asserting that it is technologically impossible or prohibitively expensive to make PCS devices hearing aid compatible;³¹ rather, the commenters propose solutions that place the burden of access on individuals who wear hearing aids rather than on the wireless industry. It is entirely appropriate and in keeping with the statutory requirements of the Hearing Aid Compatibility Act for the Commission to maintain responsibility for ensuring that a full range of options are explored.

21. The second reason for the exemptions was the perception that these types of phones were "specialized second phones" and that hearing impaired individuals would not be disadvantaged by being unable to use them.³² The House report notes, however, that

²⁹47 U.S.C. § 610(b)(2)(C). The four factors which mandate revocation of the exemption do not have to be shown in order to warrant a review of the issues involved.

³⁰H. R. Rep. No. 674, 100th Cong., 2d Sess., at 9.

³¹The Hearing Aid Compatibility Act does not mandate any particular technology. See H. R. Rep. No. 674, 100th Cong., 2d Sess., at 8.

³²H. R. Rep. No. 674, 100th Cong., 2d Sess. 9.

"[a]s changes in technology or life-style make these products necessities, the FCC may remove the exemption."³³ The promise of the PCS revolution, however, is that it will become "a pivotal component of the evolving communications infrastructure of the United States,"³⁴ and will bring the freedom, security and efficiency of personal communications to the widest possible market. Accordingly, as PCS becomes an important and necessary component of the communications revolution, individuals who wear hearing aids will be disadvantaged by their lack of access to the technology.

22. Finally, the legislative history of the Hearing Aid Compatibility Act reveals that the exemptions for public mobile services and private radio services were meant to be only temporary. The Senate Report notes that while new technologies are subject to the compatibility requirements of the Act, in cases where compatibility is technologically impossible or financially infeasible, a manufacturer may apply for a waiver from the Commission. The Report explains that a temporary exemption was supplied for telephones used with public and private radio services "[i]n order to keep these telephones from being pulled from the market while an exemption is being sought under the new technology provision[.] "³⁵

³³Id. at 9.

³⁴In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7709 (1993).

³⁵S. Rep. No. 391, 100th Cong., 2d Sess. 7.

B. HEAR-IT NOW has met the four statutory factors mandating revocation of the exemption for PCS devices.

23. While the comments from industry describe the public interest in terms of the rapid deployment of PCS services, they ignore or pay lipservice to the public interests involved in making PCS services available to individuals who wear hearing aids. The Commission must nevertheless balance these two competing interests. As these Reply Comments show, the public interest will best be served by ensuring that individuals who use hearing aids have access to the new PCS technologies, and the proper time to ensure such access is prior to the arrival of PCS devices on the market.

24. Second, a continuation of the exemption for wireless phones would have an adverse effect on individuals who use hearing aids. The expected prevalence of PCS devices, coupled with the known interference effects, warrants such a conclusion. While industry, in a general acknowledgement that there is a problem, has offered up a myriad of haphazard solutions to the interference problem that place the burden of access on individuals who wear hearing aids, the Commission should nevertheless insist upon internal compatibility if such a solution is feasible.³⁶

25. Third, the comments amply demonstrate that there are technologically feasible solutions at hand. The communications field has seen a technological revolution in the seven years since the Hearing Aid Compatibility Act was passed. These technological

³⁶See S. Rep. No. 391, 2d Sess., at 6, where Committee acknowledges the availability of a portable amplifier device as a potential solution for hard of hearing individuals, but decries its usefulness as compared to an internally compatible telephone.

advances and improvements must be explored to ensure that hard of hearing individuals are not left behind. BellSouth has hinted, for instance, that design changes could make a GSM phone hearing aid compatible.³⁷ The potential availability of such options precludes an early decision that it is technologically infeasible to mandate hearing aid compatibility.

26. Finally, it should be noted that not one of the comments from industry has presented any valid evidence that compliance with a hearing aid compatibility standard would be so costly as to preclude PCS devices from being brought to market. Indeed, any such conclusions would at this point be highly speculative and grossly premature, given that it is currently unclear as to what type of standard might be imposed, or what design or other modifications would need to be made. As noted previously, however, such determinations would have to be made by the Commission in the course of its review of the exemption, and are not a required prerequisite for that review to go forward.

V. THE FCC SHOULD ESTABLISH A NEGOTIATED RULEMAKING PROCEEDING IN ORDER TO EXPEDITE RESOLUTION OF ACCESS ISSUES RELATING TO PCS.

27. HEAR-IT NOW supports the initiation of PCS in the United States. At the same time, however, the legitimate concerns of individuals who are hard of hearing must be resolved at the earliest possible date so as to ensure that all Americans have full and equal access to this new technology. As explained above, resolving access issues now will prevent future disruption and

³⁷BellSouth Comments at 9.

expense to the wireless telecommunications industry as well as individuals who wear hearing aids.

28. In order to resolve expeditiously the numerous issues raised both by HEAR-IT NOW and opposing commenters in this proceeding, the Commission should establish immediately a negotiated rulemaking committee to negotiate and develop proposed rules for hearing aid-compatible PCS devices. Such a committee would complement the work of CTIA and PCIA, and would ensure that the public interest is truly represented by bringing together all parties, including the FCC, to work together to find promptly mutually agreeable solutions to questions of access.

29. The Negotiated Rulemaking Act requires that an agency consider seven factors in determining the suitability of a proceeding for the negotiated rulemaking process.³⁸ The issues

³⁸The head of the agency must consider whether--

- (a) there is a need for the rules to be developed;
- (b) there are a limited number of identifiable interests that will be significantly affected by the rules;
- (c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules;
- (d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time;
- (e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules;
- (f) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and
- (g) the agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment.

raised in this proceeding meet the requirements for the negotiated rulemaking process. HEAR-IT NOW has shown that there is a need for rules regarding hearing aid compatibility to be developed, as the public interest requires that everyone be assured of equal access to the next generation of portable wireless communications devices, and it is clear that compatibility problems will exist. The parties whose interests are affected are initially identifiable from comments filed in this proceeding. These interests can be represented on a committee, and representatives can be expected to negotiate in good faith to reach a consensus on proposed rules expeditiously and within a prescribed time. The negotiated rulemaking proceeding will allow the parties to share, and the Commission to collect, useful and relevant information in less time than would be necessary for a traditional rulemaking proceeding, thereby conserving both public and private resources. The resources devoted to the committee by the Commission would not differ from the resources that would be devoted to a traditional rulemaking proceeding. Finally, the Commission could use the decisions reached by the committee as a basis for effective, specific rules regarding PCS compatibility with hearing aids.

VI. CONCLUSION

30. The Commission has taken a number of steps during the past seven years to ensure that the Nation's hard of hearing citizens have access to the communications devices that we all use, both to work and to enjoy life. The Commission has mandated

5 U.S.C. § 583(a).

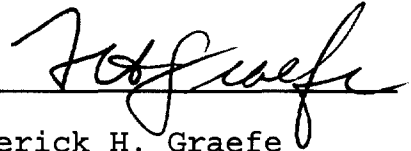
hearing aid compatibility for telephones and closed captioning decoders for new television sets, and has instituted the nationwide Telecommunications Relay Service. None of these advances in access would have occurred but for the intervention and guidance of the Federal Communications Commission. There is no reason to presume that hearing aid-compatible PCS devices will spontaneously arise from the wireless telecommunications industry, especially when some parties deny that a problem exists! If the Commission fails to act, the right of access will remain unprotected.

31. CTIA does not characterize the problem of electromagnetic interaction between PCS telephones and hearing aids as an access issue, instead claiming that such interactions are "an interference management issue."³⁹ Yet the inability to use a PCS phone in an office or in a home will not be seen as a mere "interference management issue" to the two hundred individuals and organizations who have filed letters in support of HEAR-IT NOW's petition, or to the four million Americans who wear hearing aids. Rather, the inability to use PCS will be seen as a denial of access to a new and exciting technology.

³⁹CTIA Comments at 3.

32. Therefore, HEAR-IT NOW respectfully requests that the Federal Communications Commission initiate a rulemaking proceeding to adopt necessary regulations to ensure that the four million Americans who wear hearing aids have equal access to PCS devices.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'F. Graefe', is written over a horizontal line.

Frederick H. Graefe
Michael C. Ruger
Deena M. Umbarger

Counsel to HEAR-IT NOW

August 1, 1995

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

(202) 861-1500